



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the* COURTS

**OFFICE OF  
INDIGENT DEFENSE SERVICES  
STATE OF NORTH CAROLINA**

# **2017 Report on IDS Uniform Fee Schedule Pilot**

**[Session Law 2016-94, § 19.4]**

**May 1, 2017**



## Introduction

Pursuant to Section 19.4 of Session Law 2016-94, the North Carolina Administrative Office of the Courts (NCAOC), in conjunction with the Office of Indigent Defense Services (IDS), is required to implement a pilot project establishing a uniform fee schedule for the payment of attorneys' fees for legal representation of indigent persons in district court. The pilot, which must be implemented in one or more counties in six judicial districts, requires consultation and collaboration with the chief district court judges and the district bar in each of the selected districts.

The special provision establishing the pilot directs NCAOC to report by May 1, 2017 to the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety on the status of the six judicial districts selected and the fee schedule. This report serves to meet that legislative mandate.

## Selection of the Pilot Counties

The special provision set specific parameters for selection of the six pilot counties, requiring one or more counties in at least six judicial districts. The selected counties were to include at least two counties with small caseloads, two counties with medium caseloads and two counties with large caseloads. Districts 10, 18, and 26 specifically were excluded as possible pilot counties.

Working within those parameters, IDS reviewed data on work volume, quality of outcomes, and the number of active private assigned counsel in districts across the State. Approximately 13 counties met one of the size requirements, provided generally good outcomes for indigent clients, and had a sufficient number of private assigned counsel to withstand some attrition. IDS contacted the chief district court judges in the identified counties and supplied them with the statutory language setting forth the requirements for the pilot and copies of the fee schedules currently used in Rowan and Cabarrus Counties.

Based on IDS's data and input from the chief district court judges, IDS recommended the counties below for participation in the project.

- ❑ **Large:** Iredell County (District 22A), Davidson County (District 22B)
- ❑ **Medium:** Lincoln County (District 27B), Burke County (District 25)
- ❑ **Small:** Watauga County (District 24), Macon County (District 30)

Because some attrition of court-appointed attorneys is expected, IDS tried to select counties that likely have enough attorneys to be able to withstand some attrition.

NCAOC Director Marion Warren sent a letter to the district court judges in the selected counties in March. Over the course of the next several weeks, IDS Executive Director Tom Maher and Assistant Director Whitney Fairbanks visited with the chief district court judge and the local bar for each district, sharing a Model Uniform Fee Schedule before each meeting. Although these meetings allayed some concerns, it is reasonable to assume that the selected counties will experience some growing pains and challenges under the new fee structure. However, NCAOC and IDS are committed to providing the districts with the tools and resources necessary to successfully implement the pilot and evaluate its success.

### **Model District Court Fee Schedule**

The legislative mandate required consideration of the following criteria in developing the fee schedule:

- (1) The amount required to cover the full cost of providing adequate legal services and representation to indigent persons.
- (2) The procedure for and time frame within which attorneys' fees shall be awarded.
- (3) A methodology, to be implemented as part of the pilot project, that provides for review of the uniform fee schedule at least every biennium and that incorporates appropriate increases in the uniform fee schedule based on the information from the review.
- (4) Any other criteria deemed relevant by the Administrative Office of the Courts.

Based on these criteria, IDS developed a Model District Court Fee Schedule, which is attached as Appendix A. The Model District Court Fee Schedule will be effective for all cases assigned to assigned counsel on or after June 1, 2017.

IDS used data collected from fee applications to calculate the average hours for each case type statewide and specifically in the pilot counties. These statewide averages served as a foundation for the Model District Court Fee Schedule, together with flat fees already in place in Cabarrus and Rowan Counties; input from local court officials and attorneys; and input from the Offices of Special Counsel, Appellate Defender (Parent Attorney Coordinator), and Juvenile Defender.

The Model District Court Fee Schedule is designed to cover the majority of cases resolved in district court, with the exception of civil commitment proceedings and child support enforcement proceedings. Civil commitment proceedings presented issues due to factors outside judicial system control. Commitment practices at local hospitals and commitment facilities vary widely, which leads to significant variation in the number of attorney appointments and the complexity of the proceedings. For example, some facilities routinely

encourage patients to voluntarily commit, resulting in high numbers of attorney appointments but few hearings. Other facilities routinely seek involuntary commitment, resulting in frequent, time-intensive hearings.

Child support enforcement contempt proceedings raise similar issues because of significant variation among districts. While some jurisdictions appoint and compensate attorneys per client, many jurisdictions compensate appointed counsel by session and pay a flat fee for a session of court regardless of the number of cases disposed. After reviewing statewide and local data for civil commitment and child support proceedings, IDS decided to leave in place service delivery contracts and session-based compensation policies already in use in the pilot counties. As a result, civil commitment and child support enforcement are not covered by the Uniform Fee Schedule.

In addition, because no fee schedule can cover the truly extraordinary case in which the amount of time reasonably necessary to provide effective representation is above what can be considered part of the average, the fee schedule recognizes an exceptional case policy. The exceptional case policy allows an attorney to request to be compensated under the hourly system instead of the fee schedule if assigned counsel believes that the amount of time spent on a case qualifies as exceptional. IDS will provide data on average hours to the judges as a guide in determining whether a specific case qualifies as exceptional, but the decision to designate a case as exceptional and to pay counsel under the hourly system will be within the discretion of the presiding judge. Both Cabarrus and Rowan Counties utilize an exceptional case policy.

#### *Amount Required to Cover Cost of Indigent Representation*

As noted above, IDS used data collected from fee applications to calculate the average hours for each case type statewide and specifically in the pilot counties and existing fee schedules in Cabarrus and Rowan Counties. It then used this data to set fees at an amount it calculates will provide for adequate legal services and representation.

Because the predictability of spending on court appointed counsel often is affected by factors outside of IDS control, it is not clear that the use of the model fee schedule will result in significant costs savings. However, IDS will use available data to compare representation costs in the pilot counties before and after implementation of the pilot, and compare representation costs in the pilot counties with other similar counties after implementation.

### *Procedure for Fee Awards*

The procedure for payment of assigned counsel in the pilot counties is not expected to change. Assigned counsel will continue to follow all current IDS billing policies and to use the NCAOC forms to obtain compensation under the fee schedule. However, IDS may seek to amend the relevant forms to make it easier to track fee applications submitted as part of the pilot and to make it easier for assigned counsel to know when to file the fee application. Assigned counsel will be required to continue tracking and reporting their time on the fee applications to help determine whether the fee schedule is reasonable and whether fees should be adjusted prospectively.

### *Review Methodology*

The legislative mandate requires a report on the results of the pilot to the Joint Legislative Oversight Committee on Justice and Public Safety by March 15, 2018 and every two years after. Throughout the pilot, IDS will capture relevant financial data such as increases or decreases in per case costs and impact on recoupment. While the existing data may make it difficult to track, IDS also intends to track the number of dispositions in the pilot counties and collect relevant performance measures such as trial rates and guilty pleas for the original charge. IDS then will use this data to analyze and performance indicators related to case outcomes, fiscal responsibility, and continued availability of adequate numbers of assigned counsel. The ultimate objective will be to ensure effective representation of indigent defendants while maximizing the efficient use of limited resources.

### **Summary**

The six counties selected for the pilot project will implement the Model Uniform Fee Schedule beginning June 1, 2017. IDS will continue to monitor the project, using available data to determine whether to adjust the fee schedule or take other measures to ensure quality representation. IDS also will capture data related to case outcomes, time spent on cases, fee payments and other measures that will be used to evaluate the success of the project and fulfill the reporting requirements of the legislative mandate.

**Appendix A**  
**Model District Court Fee Schedule**

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Office of Indigent Defense Services  
**MODEL DISTRICT COURT FEE SCHEDULE<sup>1</sup>**  
**Session Law 2016-94, §19A.4**

CASE TYPE	NOTES	Fee
<b>Felonies</b>		
<b>Class A-D felonies</b>	All Class A-D felonies disposed of in District Court by plea, a finding of no probable cause, voluntary dismissal, or deferral or diversion.	\$400
<b>All other felonies</b>	All Class E-I felonies disposed of in District Court by plea, a finding of no probable cause, voluntary dismissal, or deferral or diversion.	\$230
<b>Misdemeanors &amp; Probation Violations</b>		
<b>Class A1 misdemeanors</b>	All Class A1 misdemeanors disposed by plea or trial, voluntary dismissal, or deferral or diversion. <i>Excludes probation violations.</i>	\$200
<b>Class 1-3 misdemeanors and other traffic offenses</b>	All Class 1-3 misdemeanors disposed by plea or trial, voluntary dismissal, or deferral or diversion. <i>Excludes probation violations.</i>	\$185
<b>DWI</b>	All cases of driving while impaired with final disposition by plea, trial, or voluntary dismissal in district court.	\$300
<b>Probation violations</b>	All misdemeanor or felony probation violations disposed through hearing, plea, or voluntary dismissal. Includes probation violations arising out of traffic offenses.	\$185
<b>Contempt</b>		
<b>Civil and Criminal Contempt</b>	All civil and criminal contempt proceedings. <sup>2</sup>	\$185
<b>Juvenile / Delinquency</b>		
<b>Probable Cause and Transfer</b> ●Class A-E felonies	All juvenile delinquency petitions where the juvenile is accused of committing a Class A-E felony and the State is seeking transfer.	\$500
<b>Adjudication and Disposition</b> ●Class A-E felonies	All juvenile delinquency petitions where the juvenile is accused of committing a Class A-E felony disposed of by hearing, admission, or voluntary dismissal.	\$500
<b>Adjudication and Disposition</b> ●Class F-I felonies ●Class A1 misdemeanors	All juvenile delinquency petitions where the juvenile is accused of committing a Class F-I felony or Class A1 misdemeanor disposed of by hearing, admission, or voluntary dismissal.	\$300
<b>Adjudication and Disposition</b> ●Class 1-3 misdemeanors	All juvenile delinquency petitions where the juvenile is accused of committing a Class 1-3 misdemeanor disposed of by hearing, admission, or voluntary dismissal.	\$200
<b>Post-Disposition Proceedings</b> ●Motions for Review ●Probation Violations	All motions for review or probation violations regardless of offense classification.	\$150
<b>Juvenile / Child Welfare</b>		
<b>Adjudication and Disposition</b>	All abuse, neglect, and/or dependency petitions or motions up to and including the initial disposition.	\$500
<b>GAL</b>	All abuse, neglect, and/or dependency petitions or motions up to and including the initial disposition.	\$250
<b>Termination of Parental Rights</b>	All termination of parental rights petitions or motions including adjudication and disposition.	\$500
<b>GAL</b>	All termination of parental rights petitions or motions including adjudication and disposition.	\$250
<b>Other child welfare</b>	All review and permanency planning hearings.	\$130
<b>Other</b>		
<b>Withdrawals</b>	All cases where the attorney withdraws after substantive work.	\$95

<sup>1</sup> This Model District Court Fee Schedule is effective for cases to which the attorney is appointed on or after June 1, 2017.

<sup>2</sup> This does not include civil or criminal contempt proceedings arising out of a child support enforcement proceeding.

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